grove v. *Baily*, 3 Atk. 213; *Chase* v. *Redding*, 79 Mass. 418. The donor's own check, however, stands upon a different footing. An ordinary bank account is a mere parol *chose in action*. *Marine Bank* v. *Fulton Bank*, 2 Wall. (U. S.) 252. Such a claim may be irrevocably assigned by deed under seal. *Matson* v. *Abbey*, 141 N. Y. 179, 36 N. E. 11. But a parol assignment without consideration is generally held revoked by the death of the donor. *Cook* v. *Lum*, 55 N. J. L. 373, 26 Atl. 803. With a few exceptions, among them Illinois, the authorities also agree that a check is not an assignment, but a mere authority to the bank to make payment. *Hopkinson* v. *Foster*, L. R. 19 Eq. 74; *O'Connor* v. *Mechanics Bank*, 124 N. Y. 324, 26 N. E. 816. *Contra*, *Niblack* v. *Park National Bank*, 169 Ill. 517, 48 N. E. 438. And the Uniform Negotiable Instruments Law, § 189, adopted in Illinois, expressly so provides. Where, however, a check covers the whole deposit, or is accompanied by an assignment agreement, it may operate as an assignment. *In re Taylor's Estate*, 154 Pa. 183, 25 Atl. 1061. *Cf. Matter of Smither*, 30 Hun (N. Y.) 632. See 27 HARV. L. REV. 177. This is still possible, even under the Negotiable Instruments Law. See *Hove* v. *Stanhope State Bank*, 138 Ia. 39, 115 N. W. 476. The principal case, accordingly, may conceivably be justified on the ground that the check operated as an assignment of the deposit by mercantile specialty, not revoked by the death of the donor. But if this line of reasoning fails at any point, recovery is impossible, for the donee's suit against the donor's personal representative on the instrument will be met by the plea of lack of consideration. *Harris* v. *Clark*, 3 N. Y. 93.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — CONTRACTS BY RAILROAD AS TO LOCATION OF DEPOTS. — A contract provided that the plaintiff railroad should notify the defendant of the places selected by the railroad's chief engineer as locations for its depots, and that the defendant should then purchase and lay out town sites at such places, sell the lots, and divide the proceeds with the plaintiff. *Held*, that the contract is void as against public policy. *Minnesota, D. & P. Ry. Co.* v. *Way*, 148 N. W. 858 (S. D.).

Any contract made by a railroad which may interfere with the performance of its public obligations is void as against public policy. *Pueblo & A. V. R. Co.* v. *Taylor*, 6 Colo. 1. An agreement not to locate a depot at a particular place is clearly within this rule. *Williamson* v. *Chicago, R. I. & P. R. Co.*, 53 Ia. 126, 4 N. W. 870. The validity of a contract to locate a depot at a particular place, without restrictions as to stations elsewhere, is, however, in dispute. *Atlanta & W. P. R. Co.* v. *Camp*, 130 Ga. 1, 60 S. E. 177; *Cf. Pacific R. Co.* v. *Seely*, 45 Mo. 212. See 2 ELLIOTT, RAILROADS, 2d § 928. But such agreements would also seem to be improper, in view of the danger that the efficiency of the railroad may be impaired by the unnecessary burdens consequent on the maintenance of such depots. *Halladay* v. *Patterson*, 5 Ore. 177. See *Fuller* v. *Dame*, 18 Pick. (Mass.) 472; *Bestor* v. *Walthen*, 60 Ill. 138. The contract in the principal case evidently aimed to avoid all objections by leaving the selection of the depots entirely to the railroad. It is true, of course, that this power belongs primarily to the railroad. *Florida Central & P. R. Co.* v. *State*, 31 Fla. 482, 13 So. 103. Its exercise, however, must not be influenced by any interest prejudicial to the public. *Pacific R. Co.* v. *Seely*, *supra*. In the principal case, the varying values of real estate in different localities might well appeal to the railroad in its choice of locations, and the decision properly refuses to allow it to be subjected to this temptation. See *St. Joseph & Denver City R. Co.* v. *Ryan*, 11 Kan. 602, 609.

INDICTMENT AND INFORMATION — FINDING AND FILING INDICTMENT — VALIDITY OF INDICTMENT BASED ON HEARSAY TESTIMONY — EFFECT OF

PRESENCE OF STENOGRAPHER IN GRAND JURY ROOM. — The defendants were indicted for conspiracy to conceal assets in bankruptcy. Among the witnesses heard by the grand jury was a detective employed by the Department of Justice much of whose testimony was hearsay. A stenographer, duly appointed and sworn, was present in the grand jury room. *Held* that either circumstance is ground for quashing the indictment. *United States* v. *Rubin*, 52 N. Y. L. J. 473 (U. S. Dist. Ct., Conn.).

This case adds new confusion to an already irreconcilable clash of opinion in the federal courts. One federal court has announced that under no circumstances will evidence before the grand jury be subject to judicial control. See *In re Kittle*, 180 Fed. 946, 947 (S. D., N. Y.). According to another view, the court will not ordinarily review the evidence before the grand jury, but may quash the indictment in extreme cases, as where it appears on the face of the indictment that the only witness heard was incompetent. See *United States* v. *Terry*, 39 Fed. 355, 356 (N. D., Cal.). A more prevalent view is that the court may inquire into the evidence, but will quash the indictment only if there was no legal evidence, or if the evidence mainly relied on was incompetent. *United States* v. *Farrington*, 5 Fed. 343 (N. D., N. Y.); *United States* v. *Kilpatrick*, 16 Fed. 765 (N. C.); *United States* v. *Jones*, 69 Fed. 973 (Nev.). See *McGregor* v. *United States*, 134 Fed. 187, 192 (C. C. A. 4th Circ.). The principal case goes still further, for it was not even shown that the testimony harmed the defendant. This conflict, however, seems likely to remain unsettled, for in the federal courts a refusal to quash an indictment will seldom be reviewed on appeal. *McGregor* v. *United States*, *supra; Holt* v. *United States*, 218 U. S. 245. As to the stenographer, the case is opposed to previous federal *dicta* and decisions, and overrides a long established practice in the federal courts. *United States* v. *Simmons*, 46 Fed. 65. See *United States* v. *Heinze*, 177 Fed. 770, 772. The court's view that the Act of 1906, c. 3935 (34 STAT. AT L. 816) excludes stenographers from the grand jury room seems untenable. Its purpose was to permit special appointees of the Attorney-General to conduct grand jury proceedings, not to exclude persons previously admitted. See *United States* v. *Heinze*, *supra*, 773. On both grounds of decision the principal case seems to take an unnecessarily narrow view, and as to the stenographer, at least, another federal court has since reached a different conclusion. *United States* v. *Rockefeller*, (U. S. Dist. Ct. S. D., N. Y., not yet officially reported).

INJUNCTIONS — ACTS RESTRAINED — ELECTION OF DELEGATES TO ALLEGED UNAUTHORIZED CONSTITUTIONAL CONVENTION. — A special election had been held in New York to submit to the voters the question of calling a state constitutional convention. The result was certified to be in favor of holding the convention. The plaintiff, a taxpayer, seeks to enjoin the state election officials from proceeding with the election of delegates to this convention on the ground that the ballots were not properly counted at the election and that the statute in compliance with which it was held is unconstitutional. *Held*, that the injunction will not be granted. *Schieffelin* v. *Komfort*, 212 N. Y. 520.

For a discussion of this case, see this issue of the REVIEW, p. 309.

INSURANCE — RE-INSURANCE — MEASURE OF LIABILITY OF RE-INSURER WHEN INSURER BANKRUPT. — A guarantee society guaranteed the debentures of a trading company and re-insured part of the risk. The trading company failed, and the guarantee society was unable to meet the claims of the trading company's debenture holders. *Held*, that the re-insurer is liable for the full amount of the claims re-insured, rather than for the ratable sum which the insolvent guarantee society is able to pay.